IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.22533 of 2007

1. SHYAM KUMAR JHA, SON OF LATE UMA KANT JHA
2. SANJEEV KUMAR JHA, SON OF SHRI SHYAM KUMAR JHA
3. RAJEEV KUMAR JHA, SON OF SHRI SHYAM KUMAR JHA

All residents of Village-Kapsiya, Police Station - Arer, District Madhubani.

---------- **Petitioners**

- V E R S U S -

1. THE STATE OF BIHAR
2. RAM SHANKAR JHA, SON OF SHRI RAJENDRA JHA , RESIDENT OF VILLAGE-KAPSIYA, POLICE STATION-ARER, DISTRICT –MADHUBANI

---------- **Opp.Parties**

For the petitioners : Mr. Hemant Kumar Jha, Advocate
For the State : Mr.Jharkhandi Upadhaya, A.P.P.
For Opp.Party no.2 : Mr. Rikesh Sinha, Advocate

O R D E R

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The members of the second party to a proceeding under Section 133 Cr.P.C. being Case no.M.R. 145 of 2004, are aggrieved by the order dated 10.4.2007 passed by the learned Sessions Judge, Madhubani , in Cr.Revision no.1031 of 2006 whereby he has set aside the order dated 3.8.2006 passed by the learned Sub Divisional Magistrate, Benipatti, in the aforesaid proceeding and have prayed for the quashing of the order of the revisional court.

The aforesaid proceeding was initiated on the recommendation of Arrer P.S. vide non-F.I.R. case no.2 of 2004 following an enquiry on the petition filed by Opp.Party no.2 herein who was the first party in the aforesaid proceeding . It appears that the

parties are on litigating terms and the members of the second party had planted a jack fruit tree inside their own premises but adjacent to the eastern boundary wall of the first party. The growth of the said tree in due course had caused cracks to develop in the boundary wall of the first party and had also caused damage to the thatched house of the first party and it was apprehended that in the near future the possibility of the falling tree in the storm would cause damage to property and life. The police recommendation requested for removal of the said tree.

It appears that the learned Magistrate after due consideration of the materials on record by order dated 3.8.2006 directed both the parties to cut branches of their respective trees so that branches of those trees may not cause damage and disturbance to the houses and walls of both parties. This order was passed on a finding that both parties had planted fruit bearing trees on either side of the wall.

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The learned revisional court on a finding that the learned Magistrate had not passed a conditional order as per spirit of law as provided under Section 133 (1) Cr.P.C. and that after fixing the case for recording evidence passed the impugned order without recording any evidence , set aside the order of the learned Magistrate.

Assailing the order of the revisional court the learned counsel for the petitioners submitted that the learned revisional court failed to appreciate the fact that the primary purpose of initiating a proceeding under Section 133 Cr.P.C. is to preserve and maintain public peace, order and tranquility regarding dispute over public

peace, or from any way, river or channel but in the instant case the dispute related to private lands of the parties arising out of planting of fruit bearing trees and as such the instant dispute would not fall within the ambit of the provisions of Section 133 Cr.P.C.

There may be some reasonable substance in the submission of the learned counsel for the petitioners but they never raised this issue as a preliminary objection to the maintainability of the proceeding under Section 133 Cr.P.C. before the learned Magistrate and instead subjected themselves to his jurisdiction. They have also not preferred any revision against the order of the learned Magistrate against the non-maintainability of the proceeding. The issue cannot be raised now in the revision filed by the other side since there is no provision akin to a cross appeal.

In the facts and circumstances of the case, I find no apparent illegality in the order of the revisional court so as to interfere with the order.

Accordingly, this application is dismissed.

(Abhijit Sinha, J)

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Patna High Court, Patna
Dated : the 12th November,2008
Nawal Kishore Singh/A.F.R.